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## European Progress

### Outline of a Successful Activist's Case

Extract from [Stephen Whittle's in-depth legal analysis](#). 

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On 14th December a Press for Change (U.K.), activist made legal history by taking her case for unfair dismissal all the way to the European Court of Justice ... and achieving a judgement in her favour. The judgement, ratified on the 30th April 1996, means that the European Community's Equal Treatment Directive applies throughout Europe, to all transsexual people. It affects, therefore, about 40-50,000 European Citizens. - Stephen Whittle



Stephen Whittle

In April 1991 'P' was taken on as a manager at an educational establishment operated at the material time by Cornwall County Council, the competent administrative authority for the area. A year later, 'P' told the Principal and Chief Executive of that

establishment (whom we shall call 'S'), that she intended to undergo a sex change operation. At first 'S' appeared supportive and tolerant, and reassured her about her position within the establishment, but later his attitude changed. According to the national court's reconstruction of the facts, 'S's change in attitude was essentially due to the opposition of the board of governors, who at one time put forward the idea that 'P' should continue to work for the establishment as a self-employed contractor.

In the meantime, in Summer 1992, 'P' underwent initial surgical treatment with a view to her gender reassignment, as a result of which she was absent from work on sick leave. It was during that period that 'S' and the governors took the decision to dismiss her, of which she was given three month's notice, expiring on 31st December 1992. At the same time 'P' was asked to complete by that date several specific tasks which she was preparing. When 'P'

informed them that she would be returning to work dressed as a woman, they told her that she could complete the tasks assigned to her from home, so that it was not necessary for her to attend the establishment's premises. Finally, 'P's contract of employment terminated on the date fixed without her having returned to work.

'P' underwent the final gender reassignment operation on 23rd December 1992, that is to say, before her dismissal took effect but after she was given notice on 15th September 1992 of the termination of her employment. On 13th March 1993 'P' brought an action before the Truro Industrial Tribunal, claiming that she has suffered discrimination on grounds of sex. Both 'S', and the council claimed, on the contrary, that 'P' had been dismissed by reason of redundancy.

The Industrial Tribunal found that whilst there was a case for redundancy, the true reason for the dismissal was the objection on the part of 'S' and the council to 'P's intention to undergo a gender reassignment operation.

The following extracts are from Stephen Whittle's Article 'Transsexuals Finally Make Legal Headway', printed in *Gems News* issue 2.3

... the Industrial Tribunal found that English law provides no protection to transsexuals, it long being the case that under the Sex Discrimination Act, all that an employer needed to show was that they would have treated a transsexual of either (naturally recorded) sex in the same manner. However the Attorney-General has approached the question differently. He asked not whether P would have been dismissed if she had in fact been a female-to-male transsexual, but rather would she have been dismissed if she had remained a man. Holding that she would not have been, therefore he could see no reason for not upholding a claim that there had been discrimination by reason of sex.

He held that, for the purposes of this case, and the European Directive, sex is important as a social convention. Discrimination is frequently to do with the social roles of women rather than their physical characteristics, similarly discrimination suffered by transsexuals is linked to moral judgments which have nothing to do with their abilities in the sphere of employment. As the Court has a duty to ensure that the general principles of Community Law are upheld, and as these include a respect for certain fundamental rights, one of which is the elimination of discrimination based on sex as expressed in the directive, then the

**directive must be held to cover changes from one sex to another as much as it covers whether one is discriminated against because they are a man or woman.**

**If the European Court of Justice follows the Attorney-General's recommendation of extending equal treatment of men and women to cover transsexuals, to be ratified, it means that, according to Whittle; "throughout Europe it will be unlawful to discriminate against a transsexual, whether female-to-male or male-to-female, on the grounds that they are going to have or have had gender reassignment."**

**If the Court does indeed ratify the Attorney-Generals recommendations then transsexuals in England will finally be able to see legal changes to their position. Press for Change must be commended for their diligence in actively seeking human and civil rights for English transgendered people.**

Here in Australia the struggle has been no less great, and with the advent of new legislation in Western Australia and New South Wales, transsexuals are closer to achieving the legal status that should be our birthright, as with all peoples of this Earth.

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